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Paper No. 6

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OFFICE OF PETITIONS
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In re Application of Theodore W. Meyers Application No. 09/652,927 Filed: October 31, 2000 Title: TEE BAFFLE FOR USE AT INLET OR OUTLET OF SEPTIC AND OTHER ON-SITE WASTE DISPOSAL SYSTEMS

DECISION ON PETITION

This is a decision on the alternative petitions filed October 31, 2000. Petitioner requests under \$1.53 that the above-identified application be accorded a filing date of August 31, 2000, including by preliminary amendment Figure 6 omitted on original filing of the application papers. In the alternative, petitioner requests under \$1.182 that the above-identified application be accorded a filing date as of the date of filing of Figure 6, October 31, 2000.

Application papers in the above-identified application were filed on August 31, 2000. However, on October 18, 2000, the Initial Patent Examination Division mailed applicant a "Notice of Omitted Items in a Nonprovisional Application." Petitioner was notified that the application papers had been accorded a filing date; however, Figure 6 described in the specification appeared to have been omitted.

In response, on October 31, 2000, petitioner filed this petition and a copy of Figure 6. Petitioner acknowledges that this figure was inadvertently omitted from the original application as filed. However, petitioner argues that:

Because the tee baffle of the present invention is already shown in the environment of a septic tank in Fig. 1, and because Fig. 7 already shows the engagement of a single-pass effluent filter with the locking rims of the tee baffle, and further, because all claimed components of the invention that are shown in Fig. 6 are also adequately described in the text and shown in other drawing figures of the specification as originally filed to provide an enabling disclosure and convey to one of ordinary skill in the art how to make and practice the claimed invention, ... Figure 6 does not add any new matter to the application.

## Consideration under \$1.53

Petitioner acknowledges that Fig. 6 was not among the papers present in the application as filed on August 31, 2000. Whether Fig. 6 filed on October 31, 2000, contains new matter or not is not the issue. A figure not present on the filing date cannot be considered a part of the original disclosure of the application. Obviously, Figure 6 was not present in the Office on August 31, 2000. Therefore, the application cannot be accorded the August

31, 2000 filing date with the drawing of Figure 6 as a part of the original disclosure. The issue of new matter is one appropriately addressed during prosecution of the application after the filing date of the application has been determined.

Accordingly, the petition under §1.53 is **DISMISSED**.

## Consideration under \$1.182

However, the application is entitled to a filing date of October 31, 2000, the date the drawing containing Figure 6 was deposited in the Express Mail Post Office to Addressee service of the United States Postal Service pursuant to \$1.10. As required, accompanying this drawing was a supplemental declaration executed by the inventor and the petition fee. The supplemental declaration is amended to reference Fig. 6, and is in compliance with \$\$1.63 and 1.64.

Accordingly, the petition under \$1.182 is GRANTED.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing with a filing date of October 31, 2000, using the application papers received in the Office on August 31, 2000 and the drawing of Figure 6 filed on October 31, 2000. This processing will include forwarding applicants a new filing receipt.

Applicant will receive appropriate notifications recording Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries related to this decision may be directed to Petitions Attorney Nancy Johnson at 703-305-0309.

Beverly M. Flanagan

Supervisory Petitions Examiner Office of Petitions

Office of the Deputy Commissioner for Patent Examination Policy